



EU — Frontex: EU Agency for External Border Cooperation

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Summary

Since 2004, EU Member States have cooperated on border security issues through Council Regulation 2007/2004/EC establishing [Frontex](#), the *European Agency for the Management of Operational Cooperation at the External Borders of the Member State of the European Union*. In November 2011, this law was revised by Regulation 1168/2011. The expanding power, autonomy, and budget of Frontex's mandate and operational capabilities – necessary due to increased travel and migration flows as well as increasing security threats – will certainly have ramifications not only within the borders of the European Union, but also within those of its neighbors and third-countries. More specifically, this report focuses on the autonomy-related increases in Frontex's mandate and its freedom to procure technical equipment. In the future, this new purchasing freedom may provide those U.S. companies with European subsidiaries with new export possibilities and access to Frontex's procurement opportunities.

Background: Frontex

Council Regulation 2007/2004/EC established Frontex, which became operational in 2005. Frontex was established as a European Union agency with its own legal identity as well as operational and budgetary autonomy. It became necessary to create this EU-level agency to assist national-level border control and law enforcement to complement existing border control systems. European border control, today, means 42,672 km of external sea borders, 8,826 km of land borders, and the free-movement of persons, goods, and services throughout the 25 country Schengen zone.¹

Governing Structure of Frontex

The headquarters of Frontex is located in Warsaw, Poland. A Management Board and an Executive Director are responsible for the agency's governance. The Management Board is comprised of the operational heads of the national-level border guard services and two representatives from the European Commission. It also establishes and maintains transparent operating procedures for the agency's decision making processes. The Executive Director is appointed by the Management Board. Together, the Director and the Board draft budgeting recommendations for the Commission. The Executive Director oversees the budget's implementation. Currently, Frontex is comprised of a staff of 289 people – including national experts, temporary, auxiliary, and contract staff.

¹ Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, The Netherlands, Norway, Malta, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and Switzerland

Budget of Frontex: €112 million

In 2010, Frontex's budget amounted to €88 million, up from €6.5 million in 2005, the agency's first year of operation. Operational activities make up a majority of Frontex's budget – totaling €52 million, or 59% of the 2011 budget. A portion of Frontex's operational activities include pilot projects with land borders, sea borders, and air borders. In addition, its operational activities also include risk assessment and risk analysis. At the end of September 2011, Frontex's budget for 2011 was increased by an additional €24 million to help combat increasing migration problems within Member States. This has brought the total operating budget for 2011 to €112 million. While it is still too early to report on the final Frontex budget for 2012, the operating budget is expected to increase by approximately €25 million. These budget discussions will be finalized in the coming months. A complete break-down of the 2011 budget can be viewed [here](#).

Main Tasks and Responsibilities

Frontex's mandated [responsibilities](#) include the following:

- Risk analysis via intelligence gathering for the allocation of resources
- Coordinating operational cooperation between Member States
- Training of common standards to implement similar enforcement practices
- Acting as R&D facilitator for technological advancement
- Providing a rapid response capability available to the Member States
- Assisting Member States in joint return operations of foreign nationals

Frontex plays an integral role in both the internal and external security of the EU and its Member States. The agency works primarily to complement the national border management systems already in place at the Member State level. It is a key player in the implementation of an integrated border management policy, liaising not only with countries, but also other EU partners responsible for the security of national borders. These include the European law enforcement agency EUROPOL, the European Maritime Safety Agency (EMSA), and the customs controls of both EU and non EU Member States.

Major Elements of the amended Regulation

The amended Regulation will allow Frontex additional access to equipment and personnel from the Member States. The mandate of Frontex and its roles are enhanced by:

- Ensuring the availability of technical equipment for joint operations;
- Providing the ability to process personal data, once collected by a Member State;
- Allowing it to deploy its own, qualified European Border Guard Protection teams, also to increase "visibility" of the agency;
- Enhancing and ensuring joint cooperation with non-EU and non-European countries, as well as be able to provide technical assistance;
- Improving the efficiency of joint-return operations of foreign nationals;
- Streamlining the performance of national-level border protection policies and personnel;
- Guaranteeing fundamental human rights in the operations of the agency, whereby breaches of this requirement would terminate ongoing Frontex mission(s); and
- Legally obligating Member States to their commitments to the agency in sending national personnel to assist Frontex in its border protection tasks and other missions.

Article 7: Procurement of Technical Equipment

One of the most noteworthy amendments to the original Frontex Regulation addresses an important growing facet of the autonomy of this agency. Article 7 pertains to the procurement, documentation, and use of technical equipment by Frontex members. Prior to this change, Frontex was only able to *make use* of equipment from Member States.

The original [Article 7](#) of the Regulation specified the need for the management of technical equipment through maintaining centralized records of all equipment borrowed from one Member State, for the use (in most cases) within another Member State that has requested assistance and for a temporary period of time. Article 7 as amended by the [current Regulation](#) proposes allowing for more technical resources to be at the agency's disposal. More specifically, Frontex will be able to purchase, lease and co-own technical equipment as part of the agency's equipment pool, such as "vessels or helicopters," according to the Council press release from October 10, 2011. Member States will also be asked to contribute equipment to this pool, as currently is the case. The agency is responsible for financing and managing the records of the equipment.

Relevant EU procurement legislation

EU Public Procurement Directives (2004/18/EC of 31 March 2004 and 2004/17) do not apply to European institutions, but only to Member States' procuring entities. The procurement procedure for Frontex is governed by the EU Financial Regulation as follows:

(1) Council Regulation 1605/2002 of 25 June 2002 (Part 1, Title V "Procurement") of the Financial Regulation Applicable to the General Budget of the European Communities,

(2) Commission Regulation 2342/2002 of 23 December 2002 (Part 1, Title V) laying down Detailed Rules for the Implementation of Council Regulation 1605/2002 of 25 June 2002 on the Financial Regulation Applicable to the General Budget of the European Communities, as last amended. Both Regulations and their amendments can be found [here](#).

According to EU Financial Regulation 1605/2002, the opening of tenders to non-EU companies applies in the specific areas defined by the WTO/Government Procurement Agreement (GPA). Currently, this agreement only covers two European institutions: the European Commission and the Council of the European Union. This means that US-based companies are not eligible to bid on equipment and services contracts for Frontex. *However, European subsidiaries of American-based companies are eligible to participate in competitions, as long as they are legally established in an EU Member State.*

Human Rights Principles

As noted above, if a breach of human rights is found during the execution of a mission by Frontex, the mission will be forced to temporarily suspend or end its operations. This focus on human rights protection will be monitored and enforced by a newly formed consultative forum on fundamental rights and a fundamental rights officer will be appointed. Both of these developments will help to guide the agency's steering committee. The consultative forum will develop Codes of Conduct to help guarantee the respect of human rights. With regard to refugees and asylum seekers, the agency will be forced to follow a "principle of non-refoulement" (repatriation). This means an individual may not be repatriated to their homeland if handing them over to such authorities would threaten their life or freedom.

Legislative Procedure and Time-Line

This Regulation was subject to a full legislative procedure (known now as an “ordinary legislative procedure”). The Commission’s proposal was amended and adopted by the two co-legislators, the European Parliament (EP) and the Council. The Regulation was formally endorsed by the Council on October 10, 2011. The Regulation will enter into force 20 days after its publication in the EU’s [Official Journal](#), which occurred on 22 November 2011.

Weblinks

REGULATION (EU) No 1168/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (citation in *Official Journal*):

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0001:0017:EN:PDF>

The Frontex website:

<http://www.frontex.europa.eu/>

Frontex background and general information and tasks:

http://www.frontex.europa.eu/more_about_frontex/

European Parliament legislative resolution of 13 September 2011 on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX):

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0344+0+DOC+XML+V0//EN&language=EN#BKMD-2>

Council Regulation (EC, Euratom) No. 1605/2002 *on the Financial Regulation applicable to the general budget of the European Communities*:

<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2002R1605:20071227:EN:PDF>

Commission Regulation 2342/2002 *laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No. 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities*:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:357:0001:0071:EN:PDF>

For More Information:

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One can locate the nearest U.S. Export Assistance Center or Commercial Service offices throughout Europe by visiting <http://export.gov/europeanunion/>.

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